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8 CASE CLOSED

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 COBRA SYSTEMS, INC., a
California corporation,

12 Plaintiff,

13 v.

14 GEORGE FRANCIS UNGER IV,
15 PHUONG PHAM (aka DARREN
PHAM), CAMERON BROWN,
16 WILLIAM MICHAEL "COREY"
GIBSON, THERMAL ID TECH and
17 DOES 1-10, inclusive,

18 Defendant.

Case No. 16CV00569-ODW-JEM^{SA}

**CONSENT DECREE AND
[PROPOSED] ORDER**

Honorable Otis D. Wright

CONSENT DECREE AND ORDER

1. Plaintiff Cobra Systems, Inc. ("Plaintiff") filed a Complaint to this action on March 28, 2016 ("Complaint") against Defendants George France Unger IV ("Unger"), Phuong Pham ("Pham"), Cameron Brown ("Brown"), and Thermal ID Tech ("Thermal") for breach of contract, copyright infringement, removal and/or alteration of copyright management information, trade secret misappropriation, and unfair competition under Cal. Bus. & Prof. §§ 17200 and 17500. Plaintiff and Defendants now seek to settle Plaintiff's claims in accordance with the terms and conditions expressly stated in this Consent Decree.

10 2. Defendants deny the allegations in the Complaint filed by Plaintiff, and
11 by entering into this Consent Decree and [Proposed] Order, do not admit liability to
12 any of the allegations in Plaintiff's Complaint filed in this action. The Parties hereby
13 enter into this Consent Decree and [Proposed] Order for the purpose of entering into
14 an early settlement of all of Plaintiff's claims as set forth in the Complaint without
15 the need for protracted litigation, and without the admission of any liability for any
16 allegations in Plaintiff's Complaint. The Parties agree to the entry of this Order
17 without trial or further adjudication of any issues of fact or law concerning
18 Plaintiff's claims.

JURISDICTION

20 3. The Court has jurisdiction over the parties and the subject matter of this
21 lawsuit. This Decree conforms with the Federal Rules of Civil Procedure and is not
22 in derogation of the rights or privileges of any person.

23 4. The Court shall retain jurisdiction of this action during the duration of
24 the Decree for the purposes of entering all orders, judgments and decrees that may
25 be necessary to implement the relief provided herein.

WHEREFORE, the Parties to this Agreement hereby agree and stipulate to the Court's entry of this Consent Decree and [Proposed] Order, which provides as follows:

SETTLEMENT PAYMENT

2 5. The Defendants, jointly and severally, will pay to Plaintiff a
3 confidential settlement payment. The Defendants will make a first installment
4 payment of a confidential amount within five (5) days after the effective Settlement
5 Agreement entered by the Parties, and a monthly installment on the first day of each
6 month beginning May 1, 2017 and ending April 1, 2020. Any late payment will be
7 considered a material breach of the Consent Decree. Any payment made more than
8 five (5) days after the day upon which it was due will be considered a late payment.
9 For any late payment, interest shall accrue from the date the payment was due at the
10 rate set forth in California Code of Civil Procedure Section 685.010.

VOLUNTARY CESSATION

12 6. Defendants will immediately cease from using or selling any
13 standalone label printers that incorporate a TSC KU008 keyboard or equivalent pre-
14 programmed keyboard (collectively, a “Pre-Programmed Keyboard”). An
15 equivalent pre-programmed keyboard shall mean any keyboard capable of running
16 the same software code as a TSC KU008 keyboard. The Defendants will
17 immediately destroy and all versions and copies of software coded for such Pre-
18 Programmed Keyboards (as defined above) and in the Defendants’ possession, and
19 provide a written certification to Plaintiff of such destruction. Defendants are not
20 otherwise restricted from using TSC TSPL programming language for
21 programming.

MUTUAL RELEASE.

23 7. Cobra, on behalf of itself and its respective current and former agents,
24 officers, directors, employees, administrators, representatives, successors, and
25 assigns, hereby releases Thermal ID Tech, George Francis Unger IV, Phuong
26 “Darren” Pham, and Cameron Brown, each of their current and former agents,
27 representatives, successors and assigns (“Thermal Releasees”), of and from any and
28 all manner of obligation, debt, liability, tort, covenant, contract, agreement,

1 undertaking, and account, whether known or unknown, arising out of or relating to
2 the Action, including but not limited to any claims based upon or related to any state
3 or federal laws or statutes.

4 8. Thermal ID Tech, George Francis Unger IV, Phuong "Darren" Pham,
5 and Cameron Brown, individually and on behalf of themselves and their current and
6 former agents, representatives, and successors and assigns, hereby release Cobra and
7 its respective current and former agents, officers, directors, employees,
8 administrators, representatives, successors, and assigns ("Cobra Releasees"), of and
9 from any and all manner of obligation, debt, liability, tort, covenant, contract,
10 agreement, undertaking, and account, whether known or unknown, arising out of or
11 relating to the Action, including but not limited to any claims based upon or related
12 to any state or federal laws or statutes.

13 9. WITH RESPECT TO THE MATTERS RELEASED HEREIN, EACH
14 RELEASING PARTY SPECIFICALLY ACKNOWLEDGES THAT IT MAY
15 HEREAFTER DISCOVER FACTS IN ADDITION TO OR DIFFERENT FROM
16 THOSE WHICH IT NOW BELIEVES TO BE TRUE WITH RESPECT TO THE
17 RELEASED MATTERS, BUT AGREES THAT IT HAS TAKEN THAT
18 POSSIBILITY INTO ACCOUNT IN REACHING THIS AGREEMENT, AND
19 THAT THE RELEASE SHALL BE AND REMAIN IN EFFECT
20 NOTWITHSTANDING THE DISCOVERY OR EXISTENCE OF ANY SUCH
21 ADDITIONAL OR DIFFERENT FACTS, AS TO WHICH EACH RELEASING PARTY
22 PARTY EXPRESSLY ASSUMES THE RISK. EACH RELEASING PARTY
23 EXPRESSLY AND SPECIFICALLY STIPULATES AND AGREES TO WAIVE
24 AND RELINQUISH, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL
25 PROVISIONS, RIGHTS, AND BENEFITS UNDER CALIFORNIA CIVIL CODE
26 SECTION 1542, OR ANY SIMILAR PROVISION OR AUTHORITY UNDER
27 ANY OTHER STATE OR FEDERAL LAW. THAT CIVIL CODE SECTION
28 PROVIDES:

10. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

ENTIRE CONSENT ORDER

7 11. The Parties agree to the entry of this Consent Decree and [Proposed]
8 Order as full resolution of Plaintiff's claims as filed in the Complaint. This Consent
9 Decree constitutes the entire agreement between the signing Parties on settlement of
10 all of Plaintiff's claims, and no other statement, promise or agreement, either written
11 or oral, made by any of the Parties or agents of any of the Parties, that is not
12 contained in this written Consent Decree and [Proposed] Order, shall be enforceable
13 regarding the matters described herein for injunctive relief only. This Consent
14 Decree and [Proposed] Order applies to each and every claim made by Plaintiff in
15 the Complaint in this matter, and is intended to settle each and every claim made by
16 Plaintiff.

FEE AWARD RE ENFORCEMENT

18 12. The Court shall award reasonable attorney fees, costs and litigation
19 expenses incurred in connection with the enforcement of this Consent decree.

CONSENT DECREE BINDING ON PARTIES

13. This Consent Decree and [Proposed] Order shall be binding on Plaintiff
Cobra Systems, Inc. and Defendants George France Unger IV (“Unger”), Phuong
Pham (“Pham”), Cameron Brown (“Brown”), and Thermal ID Tech (“Thermal”);
and any successors in interest. Defendants have a duty to so notify all such
successors in interest of the existence and terms of this Consent Decree and
[Proposed] Order during the period of the Court's jurisdiction of this Consent
Decree and [Proposed] Order.

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TERM OF THE CONSENT DECREE

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14. The Court shall retain jurisdiction of this action to enforce provisions of
3 this Consent Decree and [Proposed] Order for thirty-six (36) months after the date
4 of this Consent Decree and [Proposed] Order, or until the injunctive relief and
5 settlement payment contemplated by this Consent Decree and [Proposed] Order is
6 completed, whichever occurs later.

7

SEVERABILITY

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15. If any term of this Agreement is determined by any court to be
9 unenforceable, the other terms of this Agreement shall nonetheless remain in full
10 force and effect.

11

SIGNATORIES BIND PARTIES

12

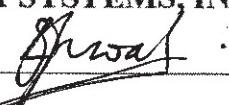
16. Signatories on behalf of the Parties represent that they are authorized to
13 bind the Parties to this Agreement. This Agreement may be signed in counterparts
14 and a facsimile signature shall have the same force and effect as an original
15 signature.

16

PARTIES' APPROVAL

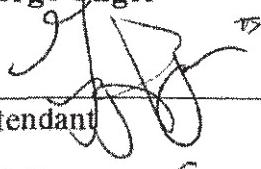
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19 Date: 4/24/17, 2017 **COBRA SYSTEMS, INC.**

20 Plaintiff 

21 Name: Douglas J. Sproat
22 Title: CEO

23 Date: 4/10, 2017 **George Unger**

24 Defendant 

25 Name: George Unger
26 Title: Secretary

1 Date: 4/20/, 2017

Phuong Pham

2 Defendant

3 Name:

4 Title:

5 PHUONG PHAM
6 CEO

7 Date: 4/20, 2017

8 Cameron Brown

9 Defendant

10 Name:

11 Title:

12 Cameron Brown
13 Sales

14 Date: 4/20/, 2017

15 Thermal ID Tech.

16 Defendant

17 Name:

18 Title:

19 PHUONG PHAM
20 CEO

21 APPROVED AS TO FORM:

22 Dated: April 20, 2017

23 **SHEPPARD, MULLIN, RICHTER & HAMPTON**
24 LLP

25 By

26 

27 LISA M. MARTENS

28 MICHAEL MURPHY

JESSE A. SALEN

Attorneys for Plaintiff

COBRA SYSTEMS, INC.

1 Dated: April 20, 2017

2 LT PACIFIC LAW GROUP, INC.

3 By



JEN FENG LEE

KENNETH TANJI, JR.

Attorneys for Defendants

GEORGE UNGER

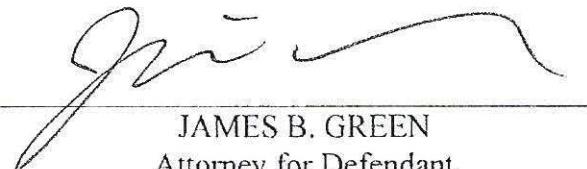
PHUONG PHAM

THERMAL ID TECH

9 Dated: 5/12/17, 2017

10 CASTLETON LAW GROUP

11 By



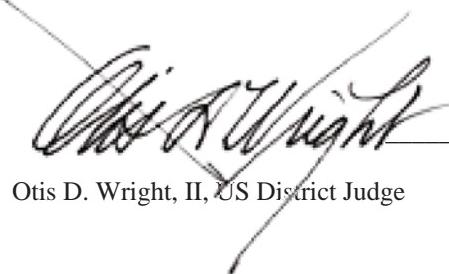
JAMES B. GREEN

Attorney for Defendant

CAMERON BROWN

16 It is so ordered.

17 May 11, 2017



Otis D. Wright, II, US District Judge